

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION**

IN RE:

HADSADONG LUANGXAY

Debtor

Case File No.: 08-5407-8-DMW

Chapter 7

**AMENDED MOTION FOR SANCTIONS FOR VIOLATING
AUTOMATIC STAY AND DISCHARGE INJUNCTION**

NOW COMES, the Debtor, by and through counsel of record, pursuant to 11 U.S.C. §§362 and 524 and hereby moves this Court for an Order imposing sanctions on Creditor Jaime R. Kirnos and the law firm of Tate, ByWater & Fuller, PLLC for violating the automatic stay and the discharge injunction of the United States Bankruptcy Code. In support of such motion, the Debtor respectfully shows as follows:

1. That Debtor filed a voluntary petition on August 11, 2008, seeking relief under Chapter 7 of the United States Bankruptcy Code.
2. That a notice of said bankruptcy filing was sent to all creditors listed on Debtor's creditor matrix.
3. That the Debtor received a Discharge on January 22, 2009.
4. That on or about April 5, 2008, the law firm of Tate, Bywater & Fuller, PLC filed a Complaint in the Circuit Court of Fairfax County, Virginia on behalf of Jaime R. Kirnos. (see Exhibit A)
5. That on or about August 14, 2009, a Corrected Order of Judgment was entered in the case of Jaime Kirnos vs Hadsadong. (see Exhibit B)

6. That on August 9, 2009 the law firm of law firm of Tate, Bywater & Fuller, PLC and Jaime R. Kirnos (hereinafter, "Creditors") received a Judgment against the Debtor in the amount of \$ 35,864.37.

7. That the Judgment in relevant parts reads as follows:

a. IT APPEARING that Hadsadong Luangxay a/k/a HERSHEY LUNANGXAY declared bankruptcy on August 11, 2008 and was discharged from bankruptcy and that his bankruptcy case was terminated in January 22, 2009;

b. IT APPEARING that the losses attributable to Defendant HADSADONG LUNAGXAY that were incurred prior to his Petition for Bankruptcy were in the amount of \$30,501.11;

c. IT APPEARING that the losses attributable to Defendant HADSADONG LUNAGXAY that were incurred after the filing of his Petition for Bankruptcy but before the discharge and termination of his bankruptcy case were in the amount of \$4,234.84;

d. IT APPEARING that the losses attributable to Defendant HADSADONG LUNAGXAY that were incurred after the discharge and termination of his bankruptcy case were in the amount of \$1,261.71;

e. ADJUDGED, ORDERED and DECREED that Plaintiff Jaime R. Kirnos is hereby awarded a money judgment against Defendant HADSADONG LUNAGXAY a/ka/ HERSHEY LUANGXAY in the amount of \$35, 864.37. for partition and contribution under Counts I and IV of the Amended Complaint.

8. That during the relevant time period, including but not limited to, the filing of Jaime R. Kirnos' complaint and subsequent judgement, the Debtor was active member of United States Marine Corp, serving active duty as defined under the Soldiers and Sailors Act.

9. That the Debtor's Statement of Intent, stated that the Debtor would surrender his interest in real property located at 3325 Ardley Court, Falls Church, VA 22014, Parcel ID No. 061-2-34-0013.

10. That the Debtor retained counsel in Virginia to inform the Creditors that he was active military at the time of the filing of the complaint and the judgment. Furthermore Debtor's counsel

informed Creditors that obtaining the judgment was a will full violation fo the automatic stay and discharge injunction. The Creditors refused to remove the judgment even thought they were aware that the Debtor was in bankruptcy at the time of the filing for a default judgment and obtaining the judgment

11. That the Creditors, still refuse to remove the judgment.

12. That the Creditors violated 11 U.S.C. §§ 362 and 524 by obtaining a judgement agains the Debtor when the Creditors were aware that the Debtor was in bankruptcy and had received a discharge.

13. That such conduct was willful and egregious in that the Creditors had full knowledge of the Debtor's bankruptcy filing as evidenced by the fact that their judgment states the date of filing and the date of discharge as well as the fact that the Creditors have been contacted by the Debtor and Debtor's counsel in Virginia.

14. That the Creditors have exhibited a complete disregard of the provisions of 11 U.S.C. §§ 362 and 524 and have demonstrated that it lacks the procedures to ensure that violations of the automatic stay and discharge injunction do not occur such that an appropriate sanction is warranted.

15. That the Creditors have been served with the Motion to Reopen the Debtor's bankruptcy and the Creditors will be served this Motion by first-class mail as provided under Rule 7004(h) of the Federal Rules of Bankruptcy Procedure.

WHEREFORE, Debtor(s) pray this Court for the following relief:

1. That an appropriate sanction of not less than \$10,000.00 be imposed on the Creditors commensurate with its continued disregard of the provisions of the automatic stay and discharge injunction especially its actions after receiving actual knowledge of the bankruptcy filing thereby continuing to cause the Debtor severe emotional distress, and anxiety;

2. That the Debtor be awarded compensatory damages in the amount of \$3,000.00 per day;

3. That the Debtor be awarded punitive damages against the attorney for the Jaime R. Kirnos' continued willful violation of the automatic stay;

4. That Debtor's attorney be awarded attorney's fees in an amount not less than \$750.00;
5. That Debtor's counsel in Virginia be awarded attorney fees and cost.
6. That the Judgment be set aside as void in violation of the discharge injunction; and
7. For such other and further relief as this Court deems just and proper.

This 28th day of April, 2018.

THE LEWIS LAW FIRM, P.A.

/s/Robert Lewis, Jr.

ROBERT LEWIS, JR.

Attorney for Debtor(s)

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CERTIFICATE OF SERVICE

I, Robert Lewis, Jr. do hereby certify, under penalty of perjury, that I am sufficient age to tender service; and that on this day I had served the attached Amended Motion For Sanctions of Violation of the Automatic Stay and Discharge Injunction and Notice, by regular U.S. mail or by Electronic Case Filing System, upon the parties set forth below:

John C. Bircher III (sent via electronic filing)
Chapter 7 Trustee

Marjorie K. Lynch (sent via electronic filing)
Bankruptcy Administrator

Jaime R. Kirnos (sent via U.S. Mail)
12913 Centre Park Circle #109
Herndon, VA 20171

Tate, Bywater & Fuller, PLC (sent via U.S. Mail)
2740 Chain Bridge Road
Vienna, VA 22181
Attorney for Jaime R. Kirnos

Hadsadong Luangxay (sent U.S. Mail)
7547 Starvalley Drive
Charlotte, NC 28210

See attached Mailing matrix

This 28th day of April, 2018.

THE LEWIS LAW FIRM, P.A.

/s/Robert Lewis, Jr.
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